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No. 85-1388 (4)

In the Supreme Court of the United States

OCTOBER TERM, 1986

CARRIE ROSE, PETITIONER

v.

ARKANSAS STATE POLICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796 *et seq.*, provides for a federal payment of $50,000 to the survivors of law enforcement officers who are killed in the line of duty, and guarantees that this payment "shall be in addition to any other benefit that may be due from any other source" (42 U.S.C. 3796(e)). The question presented is whether the Benefits Act preempts Ark. Stat. Ann. § 12-3605(G) (Supp. 1985), which reduces the State's workers' compensation liability to the survivors of law enforcement officers by the amount paid those survivors "under an of Congress."

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

William Rose, an Arkansas State Trooper, was killed while on duty in December 1982. As a result of his death, his widow, the petitioner here, received a $50,000 benefit from the federal government pursuant to the Public Safety Officers' Benefits Act (Benefits Act), 42 U.S.C. 3796 *et seq.* That statute, enacted in 1976 (Pub. L. No. 94-430, § 2, 90 Stat. 1346), provides for a payment in the amount of $50,000 to the survivors of "a public safety officer [who] has died as a direct and proximate result of a personal injury sustained in the line of duty." 42 U.S.C. 3796(a).[1]

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[1]The statute was reenacted in essentially identical terms in 1979. Pub. L. No. 96-157, § 2, 93 Stat. 1219.

Petitioner also sought death benefits under the Arkansas workers' compensation program. Respondent, the state entitys responsible for dispensing workers' compensation benefits, acknowledged that petitioner's claim was compensable (Pet. App. A2-A3). But it insisted that its liability to petitioner should be reduced by the amount that she had received from the federal government under the Benefits Act. In making this claim, respondent relied on a provision of Arkansas law enacted in 1981, five years after the Benefits Act took effect. The Arkansas provision (Ark. Stat. Ann. § 12-3605(G) (Supp. 1985)) states as follows:

> In the event that any public employee * * * is entitled to receive workers' compensation benefits * * * as a result of * * * death, and such * * * death gives rise to an entitlement of benefits under * * * an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, * * * the state workers' compensation fund[] shall be entitled to a credit against its liability for payment of * * * benefits received under * * * [the] Act of Congress.

An administrative law judge rejected respondent's claim for a set-off (Pet. App. E1-E5). He relied on 42 U.S.C. 3796(e), which provides that "[t]he benefit payable under [the Benefits Act] shall be in addition to any other benefit that may be due from any other source." In view of this provision, the judge concluded that the Benefits Act "is in direct conflict" with Ark. Stat. Ann. § 12-3605(G) (Supp. 1985) and that "the latter must fail under the Supremacy Clause of the United States Constitution." Pet. App. E3. The Arkansas Workers' Compensation Commission reversed, finding "no conflict" between the Benefits Act and the Arkansas statute (Pet. App. D3).

The Arkansas Court of Appeals affirmed the Commission's ruling. Citing *Richardson* v. *Belcher*, 404 U.S. 78 (1971), the court held that there is nothing inherently

unconstitutional in "an offset between federal benefits and state benefits" (Pet. App. A4). And the court concluded that "Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the [Benefits] Act" (*id.* at A5). The court therefore "fail[ed] to see a supremacy clause argument" and upheld the reduction of respondent's liability to petitioner by $50,000 (*ibid.*).[2] The Arkansas Supreme Court denied petitioner's request for review (*id.* at C1).

ARGUMENT

1. The principles governing cases such as this one, which involve claims of federal preemption, are "familiar and well-established." *Capital Cities, Inc.* v. *Crisp*, 467 U.S. 691, 698 (1984). "[T]he Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to' federal law." *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, No. 83-1925 (June 3, 1985), slip op. 5 (quoting *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824)). Thus, as the Court repeatedly has explained, "state law is nullified to the extent that it actually conflicts with federal law"—where, for example, "state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Hillsborough County*, slip op. 5 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). In a case involving such a preemption claim, the validity of the challenged state law turns on its consistency with the congressional purposes. See *Allis-Chalmers Corp.* v. *Lueck*, No. 83-1748 (Apr. 16, 1985), slip

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[2]Petitioner had been awarded $15,000 in state death benefits pursuant to other provisions of state law, and the court of appeals held that this amount also could be set off against the State's liability for workers' compensation benefits (Pet. App. A2, A5-A7). This state-law holding is not in dispute here.

op. 6. See generally *Capital Cities*, 467 U.S. at 698-699; *Michigan Canners & Freezers Ass'n, Inc.* v. *Agricultural Marketing & Bargaining Board*, 467 U.S. 461, 469 (1984).

2. Here, an "actual conflict" between the state program and federal law is plain from the face of the Benefits Act. With the exception of benefits payable under two specifically enumerated federal programs,[3] the Benefits Act unambigously provides that "[t]he benefit payable under this subchapter shall be *in addition to any other benefit* that may be due from any other source." 42 U.S.C. 3796(e) (emphasis added). The Arkansas statute, which looks to the federal payment in making a dollar-for-dollar reduction in Arkansas workers' compensation benefits, simply disregards this congressional directive.

Respondent nevertheless insists (Br. in Opp. 8-9) that the Benefits Act does not preclude the States from taking federal payments into account in making their own compensation awards; they contend that Congress intended only to ensure that an officer's survivors would receive at least $50,000 from *some* source. But the legislative history of the Benefits Act makes it clear that Congress intended to foreclose precisely that interpretation of the statute. Passage of the Benefits Act was prompted by concerns about the inadequacy of death benefits paid by States and localities to the survivors of law enforcement officers killed in the line of duty. See H.R. Rep. 94-1032, 94th Cong., 2d Sess. 3 (1976); 122 Cong. Rec. 12003 (1976) (remarks of Rep. Matsunaga); *ibid.* (remarks of Rep. Fish); *id.* at 12005 (remarks of Rep. Biaggi); *ibid.* (remarks of Rep. Lent); *id.* at 12007 (remarks of Rep. Seiberling); *id.* at 12008 (remarks of Rep. Ford); *id.* at 12012 (remarks of Rep. Rodino); *id.* at 12002 (remarks of

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[3]See 42 U.S.C. 3796(e)(1) and (2). These exceptions were included in the Benefits Act "[t]o prevent double payment from Federal sources." S. Rep. 94-816, 94th Cong., 2d Sess. 8 (1976).

Rep. Eilberg); *id.* at 12016 (remarks of Rep. Fish). See generally *Russell* v. *LEAA*, 637 F.2d 1255, 1261 & n.13 (9th Cir. 1980). While recognizing that the responsibility for providing adequate benefits lay in the first instance with the States (see, *e.g.*, 122 Cong. Rec. 12007-12008 (remarks of Rep. Gilman)), Congress authorized federal payments "in recognition of society's moral obligation to compensate the families of those individuals who daily risk their lives to preserve peace and to protect our lives and property." H.R. Rep. 94-1032, *supra*, at 3. See S. Rep. 94-816, 94th Cong., 2d Sess. 5 (1976); 122 Cong. Rec. 12006 (1976) (remarks of Rep. Zeferetti); *id.* at 12008 (remarks of Rep. Minish); *id.* at 22634 (remarks of Sen. McClellan).

This federal payment—repeatedly described as a "gratuity" (see, *e.g.*, 122 Cong. Rec. 12007 (1976) (remarks of Rep. Gilman); *id.* at 12012 (remarks of Rep. Gaydos); see also S. Rep. 96-142, 96th Cong., 1st Sess. 58 (1979))—was expressly *not* intended to substitute for state death benefits. Congress thus explained that "the $50,000 death benefit is over and above all other benefits which the officer's survivors may receive." H.R. Rep. 94-1032, *supra*, at 6. See *id.* at 5. It was made equally clear during floor debate that the Benefits Act was "designed to meet the immediate financial need of survivors and [was] not intended as a substitute measure in instances where State and local governments already have benefit programs in effect." 122 Cong. Rec. 12008 (1976) (remarks of Rep. Minish). See *id.* at 12002 (remarks of Rep. Eilberg) ($50,000 federal payment is "over and above all other benefits"); *id.* at 12012 (remarks of Rep. Gaydos) ("it is intended that [the Benefits Act] supplement local efforts").[4] Cf. *Russell*, 637 F.2d at 1261. The challenged Arkansas statute, which converts the $50,000 federal

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[4]Congress's intention that the $50,000 payment remain undiluted is emphasized by other aspects of the Benefits Act program. For example, benefits paid under the statute are immune both from attachment (see 42 U.S.C. 3796(f)) and from federal income tax. See H.R. Rep. 94-1032,

payment from a "gratuity" for the decedent's family into a subsidy for the state workers' compensation fund, plainly frustrates this congressional goal. And it would indeed be ironic if a federal benefit that Congress enacted because it found state benefits to be inadequate itself became the occasion for reducing state benefits below their already presumptively-inadequate level.

It should be added that this is not a case in which federal law requires the State to undertake new financial obligations. To the contrary, respondent concededly is liable to petitioner under the existing Arkansas workers' compensation program, unless it is relieved of that obligation by the challenged Arkansas statute.[5] There is nothing novel, moreover, in the proposition that Congress may bar the States from taking specified factors into account in the operation of their benefit or spending programs. See, *e.g.*, *Nash* v. *Florida Industrial Comm'n*, 389 U.S. 235, 236-237 (1967). Cf. *Wisconsin Dep't of Industry, Labor & Human Relations* v. *Gould, Inc.*, No. 84-1484 (Feb. 26, 1986), slip op. 7-8. Because Congress erected such a bar here—plainly indicating that payments made under the Benefits Act should supplement, rather than substitute for, state death benefits—application of Ark. Stat. Ann. § 12-3605(G) (Supp. 1985) to Benefits Act awards is foreclosed by the Supremacy Clause.[6]

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supra, at 5-6; 122 Cong. Rec. 12004 (1976) (remarks of Rep. Drinan); *ibid.* (remarks of Rep. Biaggi); Rev. Rul. 77-235, 1977-2 C.B. 45.

[5]The problems that might arise if a State, in response to a federal statute like the one here, simply declined to enact a benefits program of its own, or entirely eliminated a program that previously existed, accordingly are not presented in this case. Cf. 122 Cong. Rec. 12016 (1976) (remarks of Rep. Wiggins).

[6]The cases relied upon by respondent (Br. in Opp. 8-11) are wholly inapposite. In *Richardson* v. *Belcher*, 404 U.S. 78 (1971), cited both by respondent and by the court below, this Court upheld Congress's use of *state* payments to reduce *federal* benefits; the case accordingly presented no Supremacy Clause issue. In *Coletta* v. *State*, 106 R.I. 764,

3. While there is no conflict between the decision of the Arkansas Court of Appeals and that of any other court, so far as we are aware Arkansas currently stands alone among the States in setting off the $50,000 Benefits Act payment against its liability under a workers' compensation program.[7] The approach taken by Arkansas accordingly "present[s] important questions touching the accommodation of state and federal interests under the Constitution." *Kosydar* v. *National Cash Register Co.*, 417 U.S. 62, 65 (1974). In order to ensure uniform administration of this nationwide benefits program, review by this Court of the question presented here would be appropriate.[8]

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263 A.2d 681 (1970), a state court held that an individual receiving full pay from the United States Army was, as a matter of state law, ineligible for workers' compensation benefits. That case involved neither a preemption claim nor a federal statute containing a provision similar to Section 3796(e). In *Nooe* v. *Baltimore*, 28 Md. App. 348, 345 A.2d 134 (5 Ct. Spec. App. 1975), and *State ex rel. De Boe* v. *Industrial Comm'n*, 161 Ohio St. 67, 117 N.E.2d 925 (1954), there was similarly no federal question presented: both involved state-law questions concerning the availability of workers' compensation. Finally, *Eagle Star Ins. Co.* v. *Deal*, 337 F. Supp. 1264, 1273 (W.D. Ark. 1972), rev'd on other grounds, 474 F.2d 1216 (8th Cir. 1973), and *Phifer* v. *Union Carbide Corp.*, 492 F. Supp. 483, 484 (E.D. Ark. 1980)—decisions holding that federal courts lack jurisdiction to determine an individual's entitlement to workers' compensation benefits under Arkansas law—are irrelevant in this case because petitioner filed her claim with the Arkansas Workers' Compensation Commission and litigated it in the Arkansas courts.

[7]We are informed by the Bureau of Justice Assistance, the office within the Department of Justice that administers the Benefits Act, that awards totalling some $11-$12 million are made under the statute annually. Over the last five years, Arkansas claimants have received approximately $1.5 million under the Benefits Act.

[8]Because the inconsistency between the federal and state laws is so plain from the language and legislative history of the Benefits Act, the Court may wish to consider summary reversal.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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